

FRERES LUMBER COMPANY, INC.)	AGBCA No. 97-164-1
(RIDGETOP TIMBER SALE),)	
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Mark C. Rutzick)	
LeBoeuf, Lamb, Greene & MacRae)	
KOIN Center, Suite 1600)	
222 S.W. Columbia Street)	
Portland, Oregon 97201)	
)	
Charles D. Carlson)	
Brown, Roseta, Long, McConville,)	
Kilcullen & Carlson)	
210 Northbank Building)	
44 Club Road)	
Eugene, Oregon 97401)	
)	
Representing the Government)	
)	
Jim Kauble)	
Office of the General Counsel)	
U.S. Department of Agriculture)	
1734 Federal Building)	
1220 S.W. Third Avenue)	
Portland, Oregon 97204)	

DECISION OF THE BOARD OF CONTRACT APPEALS

November 20, 1998

OPINION BY ADMINISTRATIVE JUDGE JOSEPH A. VERGILIO

On October 9, 1990, the Forest Service (Respondent) awarded to Freres Lumber Company, Inc., of Lyons, Oregon (Appellant), Contract No. 091789, the Ridgetop Timber Sale in the Willamette National Forest, Oregon. In July 1995, a fire damaged or destroyed approximately sixty-five percent of one sale unit. Freres filed a claim for \$1,125,332.28, the alleged value of lost timber. Concluding that the fire was an "Operations Fire" (*i.e.*, one caused by purchaser's operations, other than a negligent fire), the Contracting Officer denied the claim and found Freres liable for approximately \$220,000 in fire suppression costs incurred by the Forest Service, less \$10,143.50 determined to be

Freres' fire suppression costs. On May 15, 1997, the Board received this appeal filed under the Contract Disputes Act, 41 USC §§ 601-613, as amended. Under theories of breach of contract, Freres seeks to recover the alleged value of the lost timber, to deny the Government claim for fire suppression costs, and to recover the costs it incurred in suppressing the fire.

The parties engaged in discovery. Freres filed a motion for partial summary judgment. The Board denied the motion by decision dated February 27, 1998. Freres Lumber Co., AGBCA No. 97-164-1, 98-1 BCA ¶ 29,623. Thereafter, the parties settled the issues in this case. By letter dated November 4, 1998, Freres requests that its appeal be dismissed with prejudice.

DECISION

This appeal is dismissed with prejudice.

JOSEPH A. VERGILIO
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D.C.
November 20, 1998